

IN THE DRAWINGS:

Applicant submits herewith a replacement sheet with changes to Figures 3 and 5.

REMARKS

Claims 1-8 remain in this application. Applicant respectfully requests continued examination.

The drawings were objected to because the leader for reference numeral 36 is missing in Figure 5 and the drawing does not show the feature of plastic as recited in Claim 6.

The leader for reference numeral 36 is present in Figure 5. However, the cross hatching of Figure 5 has been changed to illustrate that the material is plastic. The leader for 47 is missing in Figure 3, and that has been provided. Applicant respectfully requests that the objection to the drawings be withdrawn.

The disclosure was objected to because of certain specific informalities in the specification, identified in the Office Action. The specification has been amended, specifically the paragraphs noted in the Office Action, to correct the informalities.

Applicant respectfully requests that the objection to the disclosure be withdrawn.

Claims 1-8 were rejected under 35 U.S.C. §112, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office Action points out that claim 1 is unclear as to whether it is a Jepsun claim or not. Applicant has amended claim 1 to include the standard Jepsun language. Applicant respectfully requests that this rejection be withdrawn.

Claims 1, 2 and 5 were rejected under 35 U.S.C. §103(a) as unpatentable over *Koren* (6,484,952), *Lesikar* (4,881,280) and "Applicant's admitted prior art." Applicant respectfully traverses.

Both the *Koren* and *Lesikar* waterfall structures are for use in swimming pools or water spa that utilizes concrete walls. In *Koren* Figure 3 clearly illustrates that the wall (24) on which

the water conduit (16) of the waterfall apparatus (10) sits is made of concrete. The specification specifically points out that the water conduit (16) must be made of metal or other material capable of bearing the weight of the concrete coping (28). (Column 2, lines 31-34).

In *Lesikar* the specification specifically describes the waterfall unit (16) as located in a depression (38) formed in gunnite (27), below the top (39) of the gunnite. The unit (16) is set in mortar after the gunnite has cured. (Column 2, lines 54-58).

Both the *Koren* and the *Lesikar* waterfall structures are located beneath concrete coping of the pool as shown in Figure 3 of *Koren* and as shown in Figures 1, 2 and 8 of *Lesikar*.

Neither *Koren* or *Lesikar* either singly, or in combination, show or teach a waterfall structure for a spa having “a channel floor, sidewalls, and no top, a first end that is closed and a second end that is open, the channel embedded in the top rim of the spa with the sidewalls located between the outside and inside edges of the top rim with the second end located at the inside edge of the top rim; and a water access aperture at the closed end of the channel allowing water to flow into the channel.” The *Koren* patent simply directs water flow over the width of the wall (24). *Lesikar* also directs water flow over the width of his gunnite depression (38), although he introduces it at one end of the waterfall unit (16).

Applicant respectfully requests that this rejection be withdrawn.

Claim 3 was rejected under 35 U.S.C. §103(a) as being unpatentable over *Koren*, *Lesikar* and applicant’s admitted prior art as applied to claim 2 and further in view of *Lowry et al.* (5,608,927). Applicant respectfully traverses.

The Office Action points to “a rib (64)” in *Lowry et al.* Item 64 of *Lowry et al.* is an undulating surface which, according to the specification, is for the purpose of effecting a smooth and uniform water flow at low flow rates. (Column 3, lines 35-37).

Applicant respectfully submits that the suggested combination does not provide the claimed invention of claim 1 and the undulating floor of *Lowry et al.* does not equate to the flow rib of claim 3. Applicant respectfully requests that this rejection be withdrawn.

Claims 4 and 6-8 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Koren, Lesikar*, applicant's admitted prior art and *Lowry et al.* and further in view of *Gaffney et al.* (4,823,409). Applicant respectfully traverses.

First of all, none of these references in any combination, provide the claimed invention of claim 1. Furthermore, the Office Action refers to a disruptor button (59) of *Gaffney et al.* which is in fact a surface (59) raised in the center section relative to the side sections (57). The purpose of this raised center section (59) is to cause the flow chamber (54) to be thinner near the center than at the sides, making the mouth in the shape of a single concave lens creating a substantially laminar flow in the form of a sheet out through the mouth, maintaining its sheet-like appearance relatively far from the spout. (Column 4, lines 44-57).

The disruptor button (37) of applicant's invention, on the other hand, is there for the purpose of disturbing the water flow at the open end (39) just before it spills over lip (43) into the main body of water in the portable spa. (Specification, paragraph [0015]). An exact opposite function.

With respect to claim 8, the Office action asserts that the *Koren* lens is considered to conform "to the channel floor." Applicant respectfully submits that *Koren* does not disclose a lens of any kind. *Koren* utilizes a plurality of individual fibers (14) which have the ends of the fiber pushed through holes (40). Applicant respectfully submits that the individual output ends (42) of the individual fibers (14) do not form a lens. Applicant respectfully requests that this rejection be withdrawn.

In light of the above amendments and remarks, applicant respectfully submits that all the claims are in condition for allowance, and requests that the application be passed to issue.

I hereby certify that this correspondence is being deposited with the United States Postal Service as "Express Mail Post Office to Addressee" service under 37 CFR 1.10 in an envelope addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on December 12, 2006.

Express Mail Label No.: EV 632760684 US

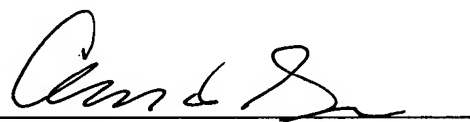
By: Marc Fregoso

Marc Fregoso
Signature

Dated: December 12, 2006

Very truly yours,

SNELL & WILMER L.L.P.



Albin H. Gess
Registration No. 25,726
600 Anton Boulevard, Suite 1400
Costa Mesa, California 92626
Telephone: (714) 427-7020
Facsimile: (714) 427-7799